

**Senate Committee on Environment and Public Works**  
**Hearing Entitled, "*Hearing on the Nominations of Shannon Estenoz to be Assistant Secretary of Fish and Wildlife and Parks of the Department of Interior, Radhika Fox to be Assistant Administrator for Water of the Environmental Protection Agency, and Michal Freedhoff to be Assistant Administrator for Chemical Safety and Pollution Prevention of the Environmental Protection Agency.*"**

**May 12, 2021**

**Questions for the Record for Radhika Fox**

**Senator Kelly:**

1. I wanted to ask you about the EPA's ongoing process of revising the Lead and Copper rule. Unlike many states, very few drinking water systems in Arizona have lead or copper pipes. As EPA reevaluates the lead and copper rule, what steps do you believe the agency can take to ensure that communities in Arizona, which can certify that there are no lead or copper pipes in our systems, are not burdened with regulatory or compliance costs associated with routinely recertifying that they still do not have any harmful piping in their systems?

**RESPONSE: EPA is currently engaged in a series of public listening sessions and roundtables to ensure that communities and stakeholders have the opportunity to provide their perspectives to the agency on protections from lead in drinking water. I appreciate you identifying these particular considerations for communities in Arizona. If confirmed, I commit to ensure that EPA considers a wide variety of perspectives from communities as we make decisions with respect to the lead and copper rule. By working together, we can forge a more durable outcome for all our communities.**

2. I also wanted to discuss water and wastewater infrastructure needs in Arizona communities along the U.S.-Mexico border. As you may know, many of our border communities suffer from aging infrastructure, but due to complex international jurisdictional issues, Arizona's border communities often struggle to get assistance. As Assistant Administrator for Water, what role do you plan to play in overseeing EPA's U.S.-Mexico Border Water Infrastructure Grant program?
  - a. Will you commit to ensuring that EPA conducts robust outreach and stakeholder engagement in border communities to ensure that local stakeholders are able to receive assistance?

**RESPONSE: If confirmed as Assistant Administrator for Water, I would oversee the U.S.-Mexico Border Water Infrastructure Grant program, in coordination with our partners in EPA Regions 6 and 9 and the Office of International and Tribal Affairs. As I stated at my nomination hearing, if confirmed, I will manage the Office of Water in a manner that is grounded in the wisdom, voice, and lived experience of those impacted by our decisions. In that spirit, I am committed to ensuring that**

**EPA engages with Arizona communities and other communities along the U.S.-Mexico Border as we carry out our critical water infrastructure work.**

3. If confirmed, you would play a role in developing regulations which would govern the discharge and cleanup of PFAS. High levels of PFAS has been detected in several groundwater aquifers near Arizona military installations This is particularly concerning to me because every groundwater aquifer in Arizona could be used for drinking water – and as the Colorado River looks likely to enter a Tier 1 shortage this year, Arizona will be more dependent than ever on our groundwater supplies. If confirmed, how will you approach regulations related to PFOA and PFOS?
- a. In particular, how will you ensure that EPA supports communities that are disproportionately dependent on drinking water from closed-source aquifers?

**RESPONSE:** As I stated at my nomination hearing, addressing PFAS and emerging contaminants will be among my top priorities if confirmed as Assistant Administrator for Water. Last month I was proud that Administrator Regan asked me to convene and lead a council of senior EPA career officials from across the agency on PFAS. One of my first actions at EPA was to move forward to implement the national primary drinking water regulation development process for PFOA and PFOS. As we continue along this process, I am committed to a flexible approach and to working collaboratively with states, tribes, water systems, and local communities that have been impacted by PFAS. The specific characteristics of Arizona communities you have highlighted are good examples of the types of information EPA will consider as we move forward under multiple environmental authorities to identify approaches that will deliver critical environmental and public health protections.

4. As part of America's Water Infrastructure Act of 2018, Congress created a new Drinking Water System Infrastructure Resilience and Sustainability Program at EPA to help small and disadvantaged community water systems prepare their infrastructure to withstand the effects of climate change and extreme weather. If Congress expanded access to this program to cities and towns of all sizes, are you confident that EPA would be able to manage a larger Drinking Water System Infrastructure Resilience and Sustainability Program, if the program was fully funded?

**RESPONSE:** Yes, I am confident I and the talented career staff in EPA's Office of Water would be able to implement an expanded program, consistent with the statutory language as enacted and given adequate appropriations levels.

5. Two weeks ago the Senate overwhelmingly passed legislation which would, among other things, create a pilot program for low-income water utility assistance. As you know, rural and tribal communities often face higher utility bills, and small water systems have less

of an ability to provide financial assistance to ratepayers in need. Do you support efforts to build upon the pilot programs for water utility assistance that were included in the Senate-passed bill?

- a. And what role do you believe EPA should play in administering a federal water utility assistance program?

**RESPONSE:** I applaud Congress’s efforts to recognize and address the challenges faced by low-income water ratepayers, particularly amidst the COVID-19 pandemic. My prior work at the U.S. Water Alliance brought me face to face with the most salient water issues facing communities, including water affordability. I believe EPA has a critical role to play in working with drinking water and wastewater utilities under the Safe Drinking Water Act and the Clean Water Act, and if confirmed I would make this work a priority, in a role consistent with the authorities Congress provides to EPA.

**Ranking Member Capito:**

1. Do you support the 2015 “water of the United States” rule, published at 80 Fed. Reg. 37054 (June 29, 2015)? If not, why not?

**RESPONSE:** Administrator Regan has directed the Office of Water to review both the 2015 and 2020 rules for lessons learned, particularly from an implementation perspective. I agree with him that it is important for us to chart a path forward on Waters of the U.S. that will be inclusive of stakeholder perspectives and forward-looking.

2. Do you support the Navigable Waters Protection Rule, published at 85 Fed. Reg. 22250 (Apr. 21, 2020)? If not, why not?

**RESPONSE:** Administrator Regan has directed the Office of Water to review both the 2015 and 2020 rules for lessons learned, particularly from an implementation perspective. I agree with him that it is important for us to chart a path forward on Waters of the U.S. that will be inclusive of stakeholder perspectives and forward-looking.

3. Do you agree that the Navigable Waters Protection Rule is now in effect in all 50 states?

**RESPONSE:** Yes.

4. You stated in the hearing your desire to have a lasting, stable definition of “waters of the United States.” If you want to avoid changes that cause regulatory uncertainty, do you support keeping the 2020 Navigable Waters Protection Rule in place? If not, why not?

**RESPONSE:** As I noted above, Administrator Regan has directed the Office of Water to review the lessons learned from the Waters of the United States rules published in both 2015 and 2020. I believe there are things that are working and that are not working from an implementation perspective, and both Administrator Regan and I want to work toward an enduring definition.

5. In October 2015, EPA issued the 4th Edition of the Peer Review Handbook to ensure consistency across the Agency in the review and utilization of science that the EPA relies on. Should EPA rulemakings and administrative decisions related to the Office of Water involving science adhere to the Agency’s Peer Review Handbook?

**RESPONSE:** I believe that science and law form the backbone of policymaking at EPA, and I look forward to working with Administrator Regan to restore scientific integrity and evidence-based policymaking throughout EPA. My understanding is that the EPA’s Peer Review Handbook applies to EPA’s scientific and technical work products, including the scientific and technical work products that inform rulemaking. If confirmed, I commit to working with Administrator Regan, EPA’s scientific integrity officials, and EPA staff to ensure that EPA’s scientific policies and procedures, including the Peer Review Handbook, are appropriately applied in EPA’s work.

6. Why are cost considerations important in considering whether and how to promulgate a National Primary Drinking Water Standard, including in protecting vulnerable communities?

**RESPONSE:** In my prior work at the San Francisco Public Utilities Commission, I experienced firsthand what it takes to comply with the range of regulations promulgated by the Office of Water. At the U.S. Water Alliance, I also worked collaboratively to address the most salient water issues facing communities, including climate change, affordability, equity and environmental justice, governance, financing, and infrastructure. If confirmed, it would be my responsibility to implement the Safe Drinking Water Act as passed by Congress, including the processes and analyses the law provides for developing drinking water regulations.

7. If confirmed, will you commit to having listening sessions on rulemakings in those states that are likely to be most significantly economically impacted by water-related rulemakings and actions?

**RESPONSE:** If confirmed, I will manage the Office of Water in a manner that is grounded in the wisdom, voice, and lived experience of those impacted by our decisions. We can't make policy sitting behind a desk in Washington, D.C.; we must actively engage with all who are impacted by our decisions—water utilities, farmers and ranchers, community organizations, environmental organizations, states, tribes, local officials, and many others. If confirmed, I commit that as EPA develops water-related policies and actions, we will actively engage with all who are impacted by our decisions. And I am excited to continue to engage with you and discuss how the Office of Water can support the West Virginia communities that you proudly represent.

8. Since joining EPA, have you had any discussions about rescinding, or done any work to rescind, the EPA's January 14, 2021 guidance titled "Applying the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program"?

**RESPONSE:** The January 14, 2021, guidance memorandum was issued at the very end of the previous Administration, and my staff have briefed me both on the content of this guidance memorandum as well as the continued concerns associated with this issue. If confirmed, I look forward to approaching decision-making on this important issue in a way that is inclusive of stakeholder perspectives and forward-looking, and that provides a durable outcome.

9. Is there a rulemaking planned to address the "functional equivalent" test that was established by the Supreme Court in *County of Maui v. Hawaii Wildlife Fund*?

**RESPONSE:** As noted above, EPA is still considering this issue. If confirmed, I look forward to approaching decision-making on this important issue in a way that is inclusive of stakeholder perspectives and forward-looking, and that provides a durable outcome.

10. Do you agree that permit finality is important for permits that have been issued under the Clean Water Act?

**RESPONSE:** I understand the important role of Clean Water Act permitting in authorizing discharges in a way that protects water quality and provides predictability for the entities subject to the permit.

11. If confirmed, do you commit that EPA will not retroactively or preemptively veto permits issued by the Army Corps of Engineers under Clean Water Act Section 404?

**RESPONSE:** Section 404 of the Clean Water Act provides important roles for EPA and the Corps of Engineers in managing the discharge of dredged or fill

**material. If confirmed, I commit to working closely with Administrator Regan and the Corps, consistent with the authorities provided to each agency by Congress, to protect human health and the environment.**

12. Since joining EPA, have you had any discussions about repealing, or done any work to repeal, the Clean Water Act Section 401 Certification Rule published at 85 Fed. Reg. 42210 (July 13, 2020)?

**RESPONSE: President Biden’s Executive Order on Public Health and the Environment includes review of certain Trump Administration actions, and the Clean Water Act Section 401 rule is one of the EPA actions identified for review in accordance with the Executive Order. EPA is currently engaged in a review of the Clean Water Act Section 401 Certification Rule.**

13. Do you support EPA’s approval of the State of Florida’s assumption of the Clean Water Act Section 404 program?

**RESPONSE: EPA’s decision to approve the State of Florida’s Clean Water Act Section 404 regulatory program was made before my arrival at EPA, and I understand that the state is currently managing the Section 404 regulatory program, with oversight by EPA. If confirmed as Assistant Administrator, I believe it is my role to work with states, the Corps of Engineers, and other stakeholders consistent with cooperative federalism and the Clean Water Act.**

14. If confirmed, do you commit to work with states seeking primacy for Underground Injection Control (UIC) Class II and Class VI programs, including granting primacy to them where consistent with EPA’s statutes and implementing regulations?

**RESPONSE: Yes.**

15. Over the past four years, EPA committed to partner with the agricultural industry and to develop creative solutions to manage excess nutrients. If confirmed, do you commit to continue to implement EPA’s memorandum titled “*Updating the Environmental Protection Agency’s Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality*,” issued February 6, 2019? If not, why not?

**RESPONSE: If confirmed, I look forward to pursuing pragmatic solutions for reducing nutrient pollution in a collaborative manner with the agricultural community. We can protect water quality and strengthen agricultural economies, and we must actively engage with all who are impacted by our decisions—water utilities, farmers and ranchers, community organizations, environmental organizations, states, tribes, local officials, and many others. I am aware of the February 2019 memo and have been briefed by EPA career staff on**

**the important work underway to provide flexible solutions for achieving water quality and broader environmental benefits, and if confirmed I commit to carrying out this important work.**

16. In 2019, the Office of Water issued a policy document titled “*Office of Water Policy for Draft Documents*.”<sup>1</sup> On May 12, 2021—the date of your confirmation hearing—EPA rescinded the Agency’s 2020 rule on the issuance, modification, withdrawal, and use of guidance documents. In light of the rescission of the 2020 rule by the Agency, will the Agency also be revoking the 2019 Office of Water policy on guidance documents?

**RESPONSE: I believe this is an important question to consider now that President Biden has revoked Executive Order 13891 and EPA has rescinded EPA’s rulemaking for issuing modifying, withdrawing, and using guidance documents. EPA’s recent actions will restore EPA’s ability to provide timely guidance on which the public can confidently rely. If confirmed, I will discuss the issue you raised regarding the 2019 memorandum with the career staff in the Office of Water.**

17. In conjunction with the recent rescission of the 2020 guidance rule,<sup>2</sup> EPA also took down the Agency’s public facing guidance portal. During your confirmation you mentioned a number of situations in your prior positions where you had to work with federal agencies, including EPA, and appreciated the need for transparency in how the Agency makes its decisions. Do you support EPA’s removal of the guidance portal from its website?

**RESPONSE: EPA has historically employed procedures for public transparency and involvement in the development of agency actions, including guidance, and if confirmed I commit to continue these practices. In announcing the rescission of the October 2020 rulemaking, EPA made clear that the agency will continue to make agency guidance available to the public, and if confirmed I commit to doing so.**

**Senator Sullivan:**

1. My Save Our Seas 2.0 (SOS 2.0) Act, the most comprehensive marine debris legislation ever passed by Congress, was signed into law in December 2020. In SOS 2.0, EPA is directed to prevent marine debris through: developing and disseminating a waste management strategy to reduce ocean plastic waste; and establishing and expanding

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<sup>1</sup>[https://www.epa.gov/sites/production/files/2020-12/documents/ow\\_policy\\_for\\_draft\\_documents\\_to\\_ow\\_program\\_directors\\_signed\\_002.pdf](https://www.epa.gov/sites/production/files/2020-12/documents/ow_policy_for_draft_documents_to_ow_program_directors_signed_002.pdf)

<sup>2</sup> <https://www.epa.gov/sites/production/files/2021-05/documents/prepub-guidancerescind-final-20210511.pdf>

infrastructure programs that reduce marine debris by: waste management and recycling grants; drinking water and wastewater grants; and trash-free waters grants.

- a. Since the Office of Water has such a substantial role in preventing marine debris through infrastructure programs, what are your thoughts on these efforts?

**RESPONSE:** My home is only a short walk to the Pacific Ocean, and I share your commitment to prevent plastic and other marine debris from entering our oceans. I appreciate your focus on this issue through the original Save Our Seas legislation as well as Save Our Seas 2.0, and if confirmed I look forward to working with you, and the talented staff in the Office of Water, to advance collective efforts on marine debris prevention.

- b. If confirmed, do you pledge to focus effort on marine debris prevention in general, and the implementation of Save Our Seas 2.0 in particular?

**RESPONSE:** Yes, this will be an important priority of mine, in coordination with EPA partners in the Office of Land and Emergency Management and the Office of International and Tribal Affairs, as well as EPA's federal partners. I look forward to keeping you informed of our important efforts in this area.

**Senator Ernst:**

1. Does the Biden Administration plan to use a new definition of WOTUS to help further its "30 x 30" initiative?

**RESPONSE:** No. EPA's efforts to develop an enduring definition of Waters of the U.S. are not related to the 30x30 initiative. President Biden's 30x30 initiative is being led by the Department of the Interior.